IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1318

CECLE G. PEARSON,

Appellant

versus

W.P. DODD; ERNESTINE DODD,
his wife; and COLUMBIA GAS TRANSMISSION
CORPORATION,

Appellees.

ON APPEAL FROM A DECISION OF THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

BRIEF ON THE MERITS

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OPINION BELOW

The opinion below by the Honorable Chief Justice Haden of the Supreme Court of Appeals of West Virginia is reported at 221 S.E.2d 171 (W. Va. 1975). A copy of the opinion is set out in full in Appendix A, Jurisdictional Statement.

The judgment of June 19, 1972, by the Honorable Frank L. Taylor, Judge of the Circuit Court of Kanawha County, West Virginia, incorporated Judge Taylor's letter memorandum of opinion of April 17, 1972. A copy of that judgment and opinion is set out in full in Appendix B, Jurisdictional Statement.

JURISDICTION

The suit is one to set aside as a cloud upon the title to an oil and gas interest a purported conveyance of such interest by a tax deed under a state statute. The judgment of the Supreme Court of Appeals of West Virginia was filed on December 18, 1975. Notice of Appeal was filed with the Supreme Court of Appeals on February 26, 1976.

The jurisdiction of the Supreme Court to hear this appeal rests upon 28 *U.S.C.* § 1257 (2) or, in the alternative, § 1257 (3). This Court noted probable jurisdiction on June 21, 1976.

STATUTES INVOLVED

The case involves the validity of West Virginia Code 1931, §§ 11A-4-12 and 11A-3-8. These statutes are set out in Appendix C, Jurisdictional Statement.

QUESTIONS PRESENTED

The questions presented by this appeal are:

(a) whether a state statute, which permits notice of a tax sale solely by a publication naming the interested person as an unknown defendant, notwithstanding that the person's name and address are known or very easily ascertainable contravenes the requirements of due process of law embodied in the Fourteenth Amendment to the United States Constitution; and

(b) if such notice is constitutionally deficient, whether a state violates due process guarantees where it invokes a statute of limitations to bar such person from attacking the validity of the sale.

STATEMENT OF THE CASE

By a deed from her son, H.C. Pearson, Jr., executed and recorded in 1937, the appellant, Cecle G. Pearson, acquired a full one-fourth interest in all of the oil and gas in sixty-eight acres of land located in Kanawha County, West Virginia. Although the entry in the land books was not changed from her son's name to her own, appellant's husband paid the real estate taxes on her interest from the time of the first assessment in 1938 until 1960. No taxes were paid on appellant's interest in 1961. As a result of this nonpayment, the assessment on appellant's interest was declared delinquent in 1962.

In 1966, the Deputy Commissioner of Forfeited and Delinquent Lands for Kanawha County instituted a suit in the name of the State of West Virginia for the sale of this and other delinquent interests in real property. On April 26 of that year, the Deputy Commissioner purported to convey by a tax deed to appellee W.P. Dodd "68 Acres, 1/8 Acre Oil and Gas Interest . . . being the same property conveyed to H.C. Pearson, Jr. . . . " In 1967, Mr. Dodd and his wife ratified an existing lease upon the sixty-eight acres executed in favor of the United Fuel Gas Company and granted United the right to drill a natural gas well. A well was completed on this interest in 1968 and produced an initial open flow of one hundred million cubic feet of gas. Under the terms of the lease, the lessors were each entitled to "their proportionate part of one-eighth of the wholesale market value" of the gas produced. Appellant was not a party to this lease.

On July 26, 1968, Mrs. Pearson paid the State Auditor $101.86 and received a Certificate of Redemption of Lands in her name for "68A, 1/4 O & G Interest" in the property in question. She subsequently filed this suit against the Dodds and United Fuel. By an order of the Circuit Court dated July 9, 1971, appellee Columbia Gas Transmission Corporation was substituted as a defendant for United Fuel.

West Virginia Code § 11A-4-12 permits the sale of delinquent property interests upon notice by publication upon "unknown parties who are or may be interested in any of the lands included . . . . " The only notice of the sale in question was given by publication in two local newspapers on April 16 and April 23, 1966. This notice mis-described the interest as "68 Acres, 1/8 Acre Oil and Gas Interest" and listed the former owner as H.C. Pearson, Jr. The record owner was the Appellant, Cecle G. Pearson.

The Circuit Court granted judgment for the defendants-appellees. In its letter memorandum of opinion, it held, *inter alia*, that the notice provisions of § 11A-4-12 did not deny the plaintiff-appellant due process of law under the United States Constitution. In affirming the judgment of the Circuit Court, the Supreme Court of Appeals of West Virginia held "that the former owner is not such an interested party in the circuit court sale to invoke the constitutional protections" of procedural due process. The court reached this conclusion by application of West Virginia Code 1931, § 11A-3-8, holding that an owner who failed to redeem her property within the statutory period provided by the section lost all rights of ownership, and hence lost any "significant property interest" sufficient to support a due process challenge. Section 11A-3-8, by its terms, permits the owner of property acquired by the state for disposition at a tax sale to redeem his property within eighteen months of the acquisition by the state.

The general issue of due process contained in the first agrument, *infra*, was raised by the appellant at the earliest possible opportunity and strongly asserted and briefed

throughout the proceedings below. *See* Memorandum of Law filed by appellant in the Circuit Court of Kanawha County, West Virginia, on August 16, 1971, pp. 55-74; Reply of Appellant, filed October 29, 1971; Motion To Set Aside Judgment, filed June 21, 1972 and overruled June 21, 1972; Petition seeking appeal, writ of error and supersedeas to the judgment of the trial court, pp. 1-14; Brief on Behalf of Appellant before the Supreme Court of Appeals of West Virginia, dated August 14, 1973, pp. 73-93; Appellant's Reply Brief in the Supreme Court of Appeals of West Virginia, dated September 14, 1973.

The second issue presented by this appeal, namely, whether the West Virginia statutory limitation on actions to contest a tax sale denies due process, arose for the first time in the final opinion of the West Virginia Supreme Court of Appeals. The statutory limitation was never raised by the appellees at any point in the proceedings, even though the West Virginia Rules of Civil Procedure require that a statute of limitations must be affirmatively pleaded. Hence, it was impossible for the appellant to respond to the statutory limitation until the filing of her Jurisdictional Statement with this Court.

ARGUMENT

I. WEST VIRGINIA CODE § 11A-4-12 VIOLATES THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION IN THAT IT PERMITS NOTICE SOLELY BY PUBLICATION TO FORMER OWNERS IN A TAX SALE, EVEN WHERE THE OWNER'S NAME AND ADDRESS ARE KNOWN OR EASILY ASCERTAINABLE.

In Part IV of his opinion for the West Virginia Supreme Court of Appeals, Chief Justice Haden implicitly recognized, in the absence of a statute of limitations, the constitutional deficiency of § 11A-4-12 as applied to the appellant under the test announced in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950):

> An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.

More particularly, this Court held in *Mullane* that mere publication notice in a local newspaper is not sufficient with respect to an individual whose name and address are known or easily ascertainable. *See Robinson v. Hanrahan*, 409 U.S. 38, 40 (1972). *Mullane* stressed that the adequacy of notice in a given action is not determined by classifying the action as in rem or in personam. Instead, the distinguishing feature of inadequate notice is "not because in fact it fails to reach everyone, but because under the circumstances it is not reasonably calculated to reach those who could easily be informed by other means at hand." 339 U.S. at 319.

This balancing test proposed in *Mullane* has been broadly applied in later cases. A right to adequate personal notice has been recognized in deprivation of property cases due to eminent domain proceedings. *Schroeder v. City of New York*, 371 U.S. 208 (1962); *Walker v. City of Hutchinson*, 352 U.S. 112 (1956). Personal notice has been required in bankruptcy proceedings. *City of New York v. New York, N.H. & H.R.R.*, 344 U.S. 293 (1953), and in cases of automobile forfeiture. *Robinson v. Hanrahan*, 409 U.S. 38 (1972). *See also Wisconsin Electric Power Co. v. City of Milwaukee*, 352 U.S. 948 (1956); *Covey v. Town of Somers*, 351 U.S. 141 (1956).

Two recent decisions by this Court rejected state statutory notice provisions in favor of notice designed to be more certain to reach interested parties. In *Covey v. Town of Somers*, 351 U.S. 141 (1956), notice of a tax sale by publishing, posting and mailing to a known incompetent was held a violation of due process. In *Robinson v. Hanrahan*, 409 U.S. 38 (1972), notice of an automobile forfeiture proceeding by certified mail addressed to an

owner's home was held unconstitutional because the state knew the owner was being held in the county jail. In both *Covey* and *Robinson*, this Court sought to determine the procedure which would provide the best notice to the property owner under the circumstances. In tax sale proceedings, it is clear that publication notice alone is not an adequate means of informing property owners that their land is being taken away. In light of *Mullane* and its progeny, the traditional state interests can no longer be held to outweigh the interests of the soon-to-be deprived property owner. Where the owner's name and address are known or easily ascertainable from county records, mailed personal notice must be deemed necessary for the tax sale procedure to comport with the due process clause of the Fourteenth Amendment.

Commentators have noted that the above conclusion is logically required if the Mullane doctrine is applied uniformly and consistently:

> In almost every tax sale case the name and address of the property owner will be readily ascertainable, either from the tax roles, the county land records, or otherwise. A direct application of the *Mullane* doctrine would lead to the conclusion that notice by publication alone is unconstitutional and that some form of personal notice by mail must be provided.

Note, "The Constitutionality of Notice by Publication Tax Proceedings," 84 *Yale L. J.* 1505, 1511 (1975); *accord*, Note, "Due Process in Tax Sales in New York: The Insufficiency of Notice by Publication," 25 *Syracuse L. Rev.* 769, 775 (1974); Legg, "Tax Sales and the Constitution," 20 *Okla. L. Rev.* 363, 375 (1967).

Two recent decisions by state courts have also reached the conclusion that landowners whose property interests are sold at a tax sale are denied due process when the only notice of the sale is by publication. In *Johnson v. Alma Investment Co.*, 47 Cal. App. 3d 155, 120 Cal. Rptr. 503 (1975), the owners, who had lived at the same address

since 1951, purchased property in 1962 which was subject to assessment by the local water district. When the district's assessment roll was compiled in 1964, the owners' address did not appear since names and addresses of property owners were obtained from the tax roll of the county tax assessor. At that time the tax roll failed to carry the owners' address, although the address was carried on the records of the tax *collector* as early as 1963.

As a result, the water district assessment was declared delinquent by way of notice, pursuant to a state statute, solely by publication. The property was subsequently sold at a tax sale and the owners brought suit to quiet title against the purchasers. The court of appeal held that to the extent that the code section authorized notice of assessment by publication alone, where the address of the owner was known or could be ascertained with reasonable diligence, the section was constitutionally deficient as a denial of due process to the owners. Since, when the water district assessment roll was compiled, the address of the owners was available from the county tax collector's records, the address was ascertainable with reasonable diligence, and the sale of the property was void.

The circumstances in the present case are similar to *Johnson*, but even more compelling. At the time of the tax sale, the appellant had lived at the same address for nearly twenty years. (A. 38,52). The interest had been recorded in her name since the execution of the deed in 1937. Moreover, the published notice completely omitted the appellant's name as well as her address, and the property interest was described incorrectly. An incomplete and accurate notice such as this was certainly not "reasonably calculated, under all the circumstances" to alert the appellant that her property was about to be forfeited for a tax deficiency.

Another recent decision by a state court held void as a violation of due process a tax sale of mineral interests where the only notice of sale, pursuant to a state statute, was by publication. *Chapin v. Aylward*, 204 Kan. 448, 464

P.2d 177 (1970). The Supreme Court of Kansas, applying the *Mullane* test, held that although neither the mineral deed nor the records in the county treasurer's office gave the address of the owners, notice by publication was insufficient where the address could have been discovered from the personal property tax or real estate tax rolls.

In the instant case, the name and address of the owner-appellant either were known to the deputy commissioner when he instituted a suit for the sale of appellant's property or were easily ascertainable from the county records. Therefore, in view of the due process requirements articulated in *Mullane* and endorsed and extended by subsequent decisions of this Court and state courts, it is patently clear that the notice provisions of the West Virginia statute violate the due process clause of the Fourteenth Amendment.

II. WEST VIRGINIA CODE § 11A-3-8 DENIES DUE PROCESS OF LAW TO AN OWNER WHOSE PROPERTY INTEREST HAS BEEN SOLD AT A TAX SALE WHEN THE STATUTE IS INVOKED TO BAR THE OWNER FROM ATTACKING THE VALIDITY OF THE SALE.

The second argument of this appeal presents this Court with the precise issue found not to be present in *Paschall v. Christie-Stewart, Inc.*, 414 U.S. 100, 102 n. 4 (1973), namely "[w]hether the alleged lack of constitutionally valid notice would preclude the running of the statute of limitations for an adverse claim. . . . "

The issue was directly addressed in *Chapin v. Aylward*, discussed in the preceding section. The court in *Chapin* held that the Kansas statute of limitations regarding actions to set aside a tax sale could not be invoked against owners who were denied due process of law by the exclusive use of publication notice. This conclusion is hardly novel; in fact, the *Chapin* holding, rendered in 1970, finds support in the legal literature of the turn of the century. A commentator during the 1890's remarked upon the potentially injurious effects of statutory limitations on contesting tax

sales, using language equally applicable to the statutes in *Chapin* and the present case:

> In most, if not all, of the American states there are upon the statute books laws which limit the right of the former owner of land sold for taxes to bring his action to test the validity of the tax title, to a much shorter period than that prescribed by the common law for the trial of titles to land. . . . [T]hey have been so worded that if applied literally, they would make a tax title entirely impervious to attack, after the lapse of the given period, no matter what irregularities or defects may undermine it, and irrespective of the fact of possession or any of the other circumstances thought material in such cases. Notwithstanding the large control of the legislature over remedies and over the limitation of actions, it may well be doubted whether such a result can lawfully be accomplished in all cases.

H. Black, A Treatise on the Law of Tax Titles § 492 (2d ed. 1893).

> In the words of another observer: A statute . . . which should make a tax-deed conclusive evidence of a complete title, and preclude the owner of the original title from showing its invalidity, would be void, because being not a law regulating evidence, but an unconstitutional confiscation of property.

T. Cooley, A Treatise on the Constitutional Limitations 769 (8th ed. R. Carrington 1927).

In light of the above commentaries, it is hardly surprising that there is considerable precedent dating back over a century for the principle being urged here, *i.e.*, that due process will not permit a state statute of limitations to bar a challenge to the validity of a tax sale. In perhaps the earliest of these decisions, *Groesbeck v. Seeley*, 13 Mich. 329 (1865), the holder of a tax deed brought an action in ejectment against the property owners who offered to show in defense that the taxes for which the lands had been sold were illegal for noncompliance with the statutes. The

trial court had barred this defense under the limitations provision of the tax laws. The appellate court held the provision to be invalid as so applied, recognizing the import of a contrary holding:

> If this tax title can be thus made indefeasible against a title in possession, by mere lapse of time, it might as well have been declared so originally It would in either case be nothing more nor less than depriving one of his property without any legal process, and is simply confiscation by ministerial and not judicial action.

13 Mich. at 344.

A similar case came before the high court of a sister state in the following year. *Baker v. Kelley*, 11 Minn. 480 (1866), was an action of ejectment by the landowner against the purchaser of a tax deed who had entered onto the land. The trial court held that the plaintiff landowner's right to demonstrate the invalidity of the tax deed had been lost because the plaintiff did not act within the one year statutory limitation period. The Minnesota Supreme Court reversed, holding that the statute of limitations was void, since the legislature could not require a person who was in possession of his property to commence an action for the purpose of vindicating his rights. The court stated:

> It follows that a law which, by its own inherent force, extinguishes rights of property or compels their extinction without any legal proceedings whatever, comes directly in conflict with the Constitution.

11 Minn. at 498.

In yet another nineteenth century decision, a similar limitations provision was held to constitute a denial of due process. *Dingey v. Paxton*, 60 Miss. 1038 (1883), involved an action for ejectment by a plaintiff showing an unbroken chain of title against one in possession of the land under a tax deed. A state statute operated to bar the plaintiff from questioning the validity of the tax deed. The court, in declaring the statute invalid, stated that the legislature

cannot create the necessity for suit by converting a possessory estate into a mere right of action and then limiting the time in which the suit could be brought:

> When the effect of . . . legislation is to transfer property without the assent of the owner, and vest it in another, it offends not only natural justice, but against that clause in our Constitution, by which the citizen is protected against loss of property except by due process of law.

60 Miss. at 1057. The court reasoned that since the landowner was in constructive possession of his land and had the legal right to possession, he was in enjoyment of all that the law could give him. He could not be disturbed in such enjoyment except by due process of law, and the attempt to divest him of his title by mere legislative decree did not comport with due process. 60 Miss. at 1055.

The principles underlying the *Dingey* holding were affirmed more recently in *Leavenworth v. Claughton*, 197 Miss. 606, 20 So. 2d 821 (1945). There, a statute limited to two years a property owner's right to challenge a subsequent tax deed to his property. The court held the statute unconstitutional as "an effort at forced conveyance by legislative fiat. That is not due process of law." 20 So. 2d at 822. In *Murrison v. Fenstermacher*, 166 Kan. 568, 203 P.2d 160 (1949), a similar one-year limitation statute was held to violate constitutional due process. The court's reasoning was based on the following principle:

> [A] statute cannot be sustained as one of limitation when it requires a party in full possession and enjoyment of his property to bring an action within a given time or else forfeit it. A person in the possession of property cannot be required under penalty of forfeiture to bring an action against one claiming an adverse interest or title to such property.

203 P.2d at 165.

In the instant case, the defendants-appellees did not

even raise the issue of a statutory limitation under § 11A-3-8. Instead, the West Virginia Supreme Court of Appeals introduced the issue for the first time in its opinion of December 18, 1975. The court in effect pleaded the statute on behalf of the appellees, notwithstanding the clear requirement of West Virginia Rules of Civil Procedure No. 8 (c) that a party must plead any defense based on a statute of limitations.

> 8 (c) *Affirmative Defenses.* In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, *statute of limitations*, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation. (emphasis supplied).

The appellate court below completely disregarded this procedural rule and attempted on its own to overcome the Appellee's failure to raise the issue. Such action was clearly improper and greatly prejudicial to the plaintiff-appellant.

More significant for purposes of the constitutional argument before this Court is the manner in which the statute was interpreted. By its interpretation of § 11A-3-8, the West Virginia court held that an owner of property is barred from asserting the invalidity of a tax sale by the running of a statute of limitation, a statute of limitations which runs not only *prior to the sale* but prior to the time it is possible to bring the suit on which the sale is predicated. W. Va. Code 11A-4, et. seq. Thus, under the court's holding Mrs. Pearson was barred from asserting the invalidity of the sale even before the suit on which

the sale was predicated was instituted. The court reached this bizarre result by indulging in the fiction that the notation of a tax delinquency is a "sale" vesting title in the state thereby triggering the limitations of § 11A-3-8. That this is a fiction is indicated by *West Virginia Const.* art. 13, § 4, which provides that delinquent lands "shall . . . be sold to the highest bidder." (Emphasis added; the section is set out in full Appendix C Jurisdictional Statement.) The state's acquisition of the lands is merely one step in the process of transferring title to a tax purchaser. By the terms of § 4, the state "shall" sell land to the highest bidder; it is not empowered to retain the land for its own use.

The second argument in summary really resolves itself into three subsidiary questions.

(1) Assuming arguendo that 11A-3-8 becomes a valid statute of limitations (statutory entitlement) as far as a statute of limitations is concerned, it cannot be used to preclude the assertion of a constitutional right.

(2) Assuming arguendo that the statute of limitations is a valid proposition and can be used at the proper time to preclude the assertion of a constitutional right, in this particular case the statute of limitations created by the West Virginia Supreme Court of Appeals, ran even before the suit on which the sale sought to be set aside is predicated was authorized by statute. This statute of limitations was then used to define when a "significant property interest" existed in the Appellant. By working the statute of limitations and the "significant property interest" question together the Court created a road block to the protection of a constitutional right. In this case the road block was both summary and peremptory. If the statute of limitations ran some reasonable time after the sale was consummated this would perhaps be a different question. (Parenthetically it is to be noted at present there is no definition of "significant property interest" only the use of the term to signify a conclusion).

The running of the statute of limitations before the delinquent land suit was authorized to be initiated clearly places the sale sought to be set aside in the previously mentioned category of a ministerial function. Placing the suit on which the sale is predicated in this category makes the suit complained of a suit that is not a suit. Therefore, this becomes a void proceeding and finally leads to the ultimate conclusion that this is a law suit that is not a law suit and one that ought not to be sanctioned by the dignity of the Courts and not sanctioned by the 14th amendment to The Constitution of The United States of America.

(3) The third and most compelling point is, however, that this is not a valid statute of limitations, and hence is of no force and effect, leaving the case to rest solely on the first issue presented. No authority is needed to cite the axiom that a statute of limitations is in derogation of the common law and a statute to be narrowly construed with respect to those it is intended to benefit. In the instant case various counsel for the appellees, throughout this protracted litigation, never cited section 11A-3-8 as a statute of limitations. This is the most compelling argument in terms of a well reasoned and structured interpretation of the statutes concerning delinquent land sales in West Virginia. The main question then presented is the original issue, that of Due Process, treated under the first major issue, herein.

An adversary relationship is the essential ingredient to a law suit, a relationship which is absent in the interpretation complained of by the West Virginia Supreme Court of Appeals.

This egregious error must be corrected for the benefit of the sanctity of the Judicial Process regardless of the potential consequences that may result from such a decision.

Thus, the West Virginia interpretation violates due process guarantees even more flagrantly than the authorities cited

earlier. Not only does it disregard the long established principle that a state statute denies due process when it bars a former owner from challenging the validity of a tax sale;, West Virginia has carried this violation one step further by asserting that a state may bar a property owner from asserting the constitutional defect even before the sale has occurred. By this interpretation, the West Virginia court has placed a virtually insurmountable burden on persons in the position of the appellant. Such a burden is, in principle and on the authorities, in utter disregard of the Fourteenth Amendment guarantee that no state shall deprive any person of property without due process of law.

CONCLUSION

The West Virginia statutes have been applied by the Supreme Court of Appeals of that state to deny the appellant due process of law as guaranteed by the Fourteenth Amendment to the United States Constitution. This Court should review and reverse the decision below.

Respectfully submitted,

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AFFIDAVIT OF SERVICE OF APPELLANT'S BRIEF ON THE MERITS

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, TO-WIT:

I, PHILIP G. TERRIE, attorney for Cecle G. Pearson, Appellant herein, depose and say that on the 4th day of August, 1976, I served three copies of the foregoing Appellant's Brief On The Merits to the Supreme Court of the United States upon W. P. Dodd and Ernestine Dodd, his wife, Appellees herein, by depositing the same in a United States Post Office or mail box with first class postage prepaid, addressed to William E. Hamb, counsel of record for said W. P. Dodd and Ernestine Dodd, his wife, at his office at 950 Kanawha Boulevard, East, Charleston, West Virginia 25301, and, further, that I served three copies of the foregoing Appellant's Brief On The Merits to the Supreme Court of the United States upon Columbia Gas Transmission Corporation, Appellee herein, by depositing the same in a United States Post Office or mail box with first class postage prepaid, addressed to William Roy Rice, counsel of record for said Columbia Gas Transmission Corporation, at his office at P. O. Box 1273, Charleston, West Virginia 25325, and also that I served three copies of the foregoing Appellant's Brief On The Merits to the Supreme Court of the United States upon Columbia Gas Transmission Corporation, Appellee herein, by depositing the same in a United States Post Office or mail box with first class postage prepaid, addressed to Thomas E. Morgan, counsel of record for said Columbia Gas Transmission Corporation, at his office at P. O. Box 1273, Charleston, West Virginia 25325.

/s/ Philip G. Terrie

Subscribed and sworn to before me by Philip G. Terrie, at Charleston, West Virginia, this 4th day of August, 1976.

My commission expires September 24, 1978.

/s/ Mary C. Matheny
Notary Public in and for
Kanawha County, West Virginia